

Mr. Vickers

15246 PLI

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

[Protest of Navy Contract Award]

FILE: B-198659

DATE: October 21, 1980

MATTER OF: Bethlehem Steel Corporation

DIGEST:

1. Procurement of ship overhaul services on "split bidding" basis does not violate holding in Norfolk Shipbuilding & Drydock Corporation, 58 Comp. Gen. 790 (1979), where Navy deletes requirement that bidder desiring to bid on total contract must submit separate bid price for drydock portion of contract since it was this aspect of "split bidding" criticized in prior decision, not concept as a whole.
2. Protest contending that Navy should consider other costs in determining lowest cost to the Government is denied as such costs are too speculative and too uncertain to be quantified with reasonable certainty.

Bethlehem Steel Corporation (Bethlehem) [has protested the award of a contract] under solicitation No. N62678-80-B-0039 [issued by the United States Navy in connection with ship repair work] on the U.S.S. Shreveport.

Bethlehem's [protest is against the form of the invitation for bids (IFB) which permitted "split bidding" on the contract.] The work to be done on the ship was broken down into Lot I (drydock work), Lot II (topside work), and Lot III (total overhaul package) for bidding purposes. [The IFB, as originally issued, permitted bidders to bid on any of the above items but if a bidder desired to bid on Lot III, the total overhaul, a bid also had to be submitted on the drydock portion] (Lot I). However, amendment 11 to the IFB deleted the requirement for a separate bid price on the drydock portion if a bid was submitted on the total requirement.]

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The following bids were opened on June 3, 1980:

	<u>Lot I</u>	<u>Lot II</u>	<u>Lot III</u>
Norfolk Shipbuilding and Drydock Corp.	\$2,762,780	"No Bid"	\$13,432,240
Metro Machine Corp.	4,500,000	\$10,371,702	13,871,702
Sun Shipbuilding and Drydock Corp.	4,850,526	"No Bid"	20,393,069
Bethlehem Steel Corp. (Key Highway)	3,021,214	"No Bid"	23,161,213
Maryland Shipbuilding and Drydock Co.	"No Bid"	"No Bid"	26,076,266

Notwithstanding the protest of Bethlehem, pursuant to section 2-407.8(b)(3) of the Defense Acquisition Regulation (DAR) (1976 ed.), [award was made] on June 12, 1980, to Norfolk Shipbuilding for the drydock portion and to Metro Machine for the topside portion based on the lowest cost to the Government.

[Bethlehem contends that the use of split bidding violates a recent decision of our Office, Norfolk Shipbuilding & Drydock Corporation, 58 Comp. Gen. 790 (1979), 79-2 CPD 214, and, further, the Navy has never performed an adequate analysis to assure that split bidding results in the lowest cost to the Government.]

The Navy states that split bidding is utilized to maximize competition by permitting smaller shipyards to bid for portions of the overhaul which do not require drydock facilities, which normally only the larger shipyards possess. Without dividing the requirement, only the larger firms could compete because of the drydock necessary for performance. [The Navy contends that this bidding method results in the Government obtaining lower prices for the topside portion because the smaller shipyards have lower overhead rates than the larger firms with higher fixed costs.]

[Concerning the contention that this type of procurement was violative of the holding in the Norfolk Shipbuilding decision, we find this allegation to be without merit.]

The 1979 decision found that the failure of a bidder to submit a price for Lot II, as required by the terms of the IFB, did not render its bid nonresponsive where award was to be made based on the low Lot III bid. Our Office reasoned:

"We believe that the failure of Sun Ship to submit a bid for topside work had no effect on the price, quality, quantity or time of performance of any contract to be awarded for the combination of drydock and topside work covered in the firm's bid for Lot III. Moreover, it is clear that there is no valid purpose in the circumstances for rejecting a bid for combined drydock and topside work which was not accompanied by separate bids for both portions of the work because no smaller firm with only topside capabilities submitted a bid. Cf. B-168479, December 31, 1969. Furthermore, the protester is not prejudiced by the Government's nonenforcement of its 'lot bidding' requirement because the protester was not low for either Lot III or for any combination with other bidders of its Lot I and Lot II bids."

While denying the protest, we made the following recommendation:

"However, we are concerned with the IFB provision that gave rise to the problem in this case. Although we have noted the concerns expressed by and on behalf of small businesses, that to ignore or eliminate a requirement to bid separately for drydock and topside work would make comparisons between large and small businesses impossible, we believe

that in the absence of a determination to set aside the topside work for small business concerns, there is no authority to award a contract for all or part of the work other than on the basis of the lowest price bid in open competition.

"We also question whether, as a practical matter, bidding restrictions effectively promote awards to smaller firms for topside work only. A bidder could submit an unreasonably inflated price for any lot of unwanted work. See B-168479, supra. Moreover, the requirement that combination bids be accompanied by separate bids for drydock as well as topside work could reduce competition among larger firms which have no interest in performing only the topside work but would be willing to perform drydock work with or without the topside work. Accordingly, we are recommending to the Secretary of the Navy that future solicitations be revised to eliminate the requirement for bidding separately for both drydock and topside overhaul work where a combination bid for all work is submitted."

[The Norfolk decision did not recommend that the Navy no longer use split bidding as a procurement method but that it was improper to require a separate bid for an item when a combination bid was submitted. By issuing amendment 11 to the instant IFB and deleting the separate bidding requirement, the Navy complied with the above decision.]

[Regarding the contention that the Navy has failed to consider the true cost of split bidding, Bethlehem cites, as examples of costs the Navy ignores, the costs of moving the ship from the yard where the topside portion is performed to the drydock yard, the costs of the delay and inefficiencies of such a move and the administrative costs of managing two contracts instead of only one.]

The Navy states that it does consider all direct costs, which can be quantified with reasonable certainty, associated with moving a partially repaired ship and includes the costs as an evaluation factor in evaluating bids. The instant IFB contained the following list of "foreseeable costs" for the movement of the ship which were added to the bid prices depending on the lot bid upon and the location of the bidder:

	<u>Lot I</u>	<u>Lot II</u>	<u>Lot III</u>
Norfolk, VA	\$ -0-	\$ -0-	\$ -0-
Newport News, VA	168	638	806
Baltimore, MD	34,851	286,222	326,266
Chester, PA	40,526	262,930	293,069

These "foreseeable costs" include those costs associated with the overhaul which are incurred by the Government for travel and per diem for ship surveyors, contract negotiator, type commander and personnel, fuel oil costs, costs of shipping Government-furnished material, family separation allowances and transportation allowances to and from specific locations in the bid area.

[The other costs involved in moving the ship are not susceptible of being calculated according to the Navy. For example, the actual movement of the ship is performed by the ship's crew as part of their normal duties, since they are on duty anyway and available to perform any duty required and, therefore, no extra costs would be incurred in having the ship moved by its crew.]

Concerning the costs associated with the alleged delays and inefficiencies of two separate awards, the Navy has responded that these are either considered in a bidder's pricing of the contract or cannot be quantified with reasonable certainty. Tasks that have to be performed twice due to split awards and the movement of the ship, such as gas-freeing of the tanks, would be included in the shipyards' bid prices and, therefore, would be considered in the evaluation of bids.


[The time necessary to move the ships from one yard to another is de minimis, according to the Navy, in relation to the total performance time of the overhaul.] Because of growth in work that must be performed during the overhaul (certain items are listed as open and inspect and the exact repairs, if any, are not known until such time), a 2-week delay is permitted between the performance of Lot I and Lot II. During this 2-week period, the ship would also be moved. In a single award, the growth work is added to the end of the performance period and, therefore, the Navy contends that the actual performance time under either situation should be substantially similar. However, even if the performance time is increased by split bidding, the monetary value of the earlier return of the ship to fleet readiness is too speculative and uncertain to be used in bid evaluation.]

Finally, [as regards the additional administrative cost of managing two contracts rather than one, the Navy states that such costs are inconsequential, if any, and too uncertain to be considered.] The two contracts would be administered successively, not concurrently, and the same salaried Government employees would work on both contracts. Moreover, DAR § 7-2003.23(b) states that, when multiple awards are contemplated, a bid evaluation factor of \$100 will be added for administrative costs of the extra contract, which the Navy contends shows the de minimis effect of such costs.

[We find the Navy has adequately justified its failure to consider the costs Bethlehem contends should be included in a bid evaluation of a split-bidding procurement. The definite costs that are attributable to split bidding are factored into the bid evaluation through the "foreseeable costs" estimate. We agree with the Navy that the other costs which Bethlehem argues should be considered are too uncertain to be quantified as an evaluation factor. It has been our consistent position that Government costs which cannot be quantified with reasonable certainty may not be used as an evaluation factor.] See 52 Comp. Gen. 997 (1973) and Allis-Chalmers Corporation, B-180301, March 26, 1974, 74-1 CPD 146.

Concerning Bethlehem's request that our Office undertake a study of split bidding to validate it as a procurement methodology, we must decline. Under our audit function we review a broad spectrum of Federal activities with limited resources. Consequently, critical decisions concerning the efficacy of each review in terms of obtaining the greatest benefit for resource utilization must be made. [We do not believe that the information furnished by Bethlehem warrants our review in that context in light of the possible benefits vis-a-vis utilization of personnel on other investigations.]

Accordingly, the protest is denied.]

A handwritten signature in dark ink, reading "Milton J. Arosen". The signature is written in a cursive, flowing style with a large initial "M".

For The Comptroller General
of the United States